

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JOZIPH YALDO, RAZKIA YALDO, and DARLI  
YELDO,

UNPUBLISHED  
April 23, 2013

Plaintiffs-Appellants,

V

ONEWEST BANK, MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, DEUTSCHE  
BANK NATIONAL TRUST COMPANY, and  
ORLANS ASSOCIATES, P.C.,

No. 307725  
Oakland Circuit Court  
LC No. 2011-119907-CK

Defendants-Appellees.

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Before: JANSEN, P.J., and SAWYER and SERVITTO, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court order granting summary disposition in favor of all defendants and dismissing plaintiffs' complaint. We affirm.

Plaintiff, Joziph Yaldo, signed an adjustable rate note with IndyMac Bank and plaintiffs executed a mortgage on their West Bloomfield home in favor of IndyMac Bank to secure the loan on June 28, 2004. The mortgage named defendant Mortgage Electronic Registration Systems ("MERS") as the mortgagee under the security instrument, and as nominee for the lender, the lender's successor's, and its assigns. Defendant OneWest Bank became IndyMac Bank's successor and, in September 2009, MERS transferred its interest and rights under the mortgage at issue to OneWest Bank.

At some point, plaintiffs fell behind in their mortgage payments. OneWest Bank thus initiated foreclosure proceedings by advertisement, hiring the law firm of defendant Orlans Associates, P.C. ("Orlans") to perform this task. A sheriff's deed on mortgage foreclosure dated September 28, 2010, reflects that OneWest Bank purchased the subject property at the foreclosure sale on that date and that the redemption period would expire on March 28, 2011. On January 6, 2011 OneWest Bank quitclaimed all of its right title and interest in the subject property to defendant Deutsche Bank National Trust Company ("Deutsche Bank"). Deutsche Bank filed a complaint in the 48<sup>th</sup> District Court against plaintiffs and all other occupants seeking an order of eviction with respect to the property on May 20, 2011.

Plaintiffs filed the instant action on June 22, 2011, alleging that defendants negligently conducted the foreclosure sale without ensuring that foreclosure was proper or that it followed proper procedure. Plaintiffs further alleged that the defendants acted in a negligent manner in the way they managed and serviced the mortgage, employed and supervised their employees. Plaintiffs brought a second count for “slander of title, conspiracy to commit slander of title, and violation of Michigan’s foreclosure by advertisement statute, namely MCL 600.3204.” In that count, plaintiffs alleged that the MERS assignment was faulty, that OneWest Bank and Orlans violated statutory foreclosure proceedings, and that the recording of the sheriff’s deed constituted a slander of title.

All defendants moved for summary disposition pursuant to MCR 2.116(C)(8), asserting that plaintiffs’ claims should be dismissed because the statutory redemption period had expired and plaintiffs did not exercise their right of redemption such that plaintiffs lacked standing to challenge the foreclosure, that plaintiffs lacked standing to challenge the assignment of a mortgage, and that plaintiffs failed to state the required elements for claims of slander of title and conspiracy and could not support these causes of action. Orlans additionally argued that as the firm hired to represent the foreclosing party, it did not owe plaintiffs any duty. OneWest Bank, MERS, and Deutsche Bank additionally argued that plaintiffs could not prevail in their negligence claim because defendants did not breach a legal duty separate and distinct from the contractual duties owed under the note and mortgage, and that the statutory violation claim fails because defendants complied with the statutory requirements for foreclosure.

Notably, plaintiffs do not appeal the trial court’s ruling with respect to their negligence or slander of title claims. Nor do they challenge the trial court’s ruling on the merits of their claim for violation of the statutory foreclosure proceedings. However, the trial court explicitly also ruled on the merits of plaintiffs’ claim for violation of the statutory foreclosure proceedings, opining on the record:

Furthermore, even if the plaintiffs’ claims were not barred due to the untimely challenge, the dismissal of the case is still required . . . .

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Finally, the wrongful-foreclosure portion of Count 2 fails as a matter of law as to the defendants. Here, defendant Orlans was not a foreclosing party. Furthermore, there has been no demonstration that the requirements of MCL 600.3204 had been violated by the remaining defendants.

In summary, plaintiff has failed to state a claim for which relief may be granted. Accordingly, the Court will grant the defendants’ motions.

Plaintiffs *state* that they challenge the alleged wrongful foreclosure itself, but they make no argument on this issue and state no law to support any argument. “An appellant’s failure to properly address the merits of his assertion of error constitutes abandonment of the issue.” *Thompson v Thompson*, 261 Mich App 353, 356; 683 NW2d 250 (2004). Thus, plaintiffs properly appeal only the ruling concerning their standing to challenge the foreclosure after

expiration after the redemption period had expired. Plaintiffs having made no argument whatsoever that the trial court erred in its ruling on the merits regarding the statutory foreclosure, even if plaintiff were to prevail on its claim that the trial court erred in granting summary disposition based upon standing, the trial court's ruling on the merits would nevertheless stand and plaintiffs would not be entitled to any relief. Plaintiffs' appeal is therefore moot.

Plaintiffs also raise on appeal a challenge to the 48<sup>th</sup> District Court's subject matter jurisdiction over eviction proceedings. This issue is not properly before the Court, as it was not part of the motion for summary disposition or the trial court's opinion and order. Plaintiffs, in fact, state, that they "just realized" that the district court did not have subject matter jurisdiction and did not have the power to decide the eviction case.

It is true that a challenge to a trial court's subject-matter jurisdiction can be raised at any time, even for the first time on appeal. *Midwest Energy Co-op v Pub Service Comm*, 268 Mich App 521, 523; 708 NW2d 147 (2005). However, in this matter, the district court proceeding was an entirely separate matter; an eviction proceeding, initiated by one of the defendants in the instant matter. The circuit court proceeding appealed in the instant matter was a separate and distinct case, initiated by plaintiffs, which did not address the eviction proceeding. If the instant appeal was one from the eviction proceeding, subject matter jurisdiction could be addressed. Or, if the trial court had ruled on the subject matter jurisdiction of the district court and we had a decision to review, this Court could address the issue of subject matter jurisdiction of the 48<sup>th</sup> District Court. But those are not the facts before us. Plaintiffs are asking us to address the subject matter jurisdiction of a court not involved in the matter on appeal and of a proceeding for which we have been provided merely a complaint for termination of tenancy. We do not even have a complete record to review, let alone a decision to rule upon.

Affirmed.

/s/ Kathleen Jansen  
/s/ David H. Sawyer  
/s/ Deborah A. Servitto